

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

STATE OF ALASKA,

Plaintiff,

vs.

KORAKANH PHORNSAVANH,

Defendant.

Case No. 3AN-13-6468-CR
COA No. A-12499

FC Cir 5-18-21 gm

DECISION

**UPON REMAND FROM THE COURT OF APPEALS FOR
RECONSIDERATION OF DEFENDANT'S MOTION FOR A NEW TRIAL
UNDER THE CORRECT LEGAL STANDARD, AND
ORDER
GRANTING DEFENDANT'S MOTION FOR A NEW TRIAL**

This matter has come before the court upon remand from the Court of Appeals with directions for this court to determine whether, under the correct legal standard as set forth in its opinion, there is a sufficient bases to grant defendant's Motion for a New Trial.

Based upon a review of the Court of Appeal's opinion, a review of the excellent briefing and argument to this court after remand, and upon a review of the entire record herein, this court is persuaded by defendant's argument, and it therefore grants defendant's renewed Motion for a New Trial.

DISCUSSION

Because the Court of Appeal's opinion demonstrated a thorough and thoughtful understanding of the evidence and issues presented at trial, this discussion will not include a recitation of the "background facts and prior proceedings" already set forth in the Court of Appeals opinion.

In its opinion, the Court of Appeals posed the question, "was the jury's verdict contrary to the weight of the evidence?" In this portion of its opinion, the Court of Appeals pointed out that "far from being a denigration or a usurpation of jury trial, [the judge's power to set aside the verdict] has long been regarded as an integral part of trial by jury as we know it." (foot note omitted). The Court of Appeals then went on to state that

Under Alaska Criminal Rule 33, a trial court is authorized to grant a motion for a new trial "in the interest of justice" if the trial court finds that the jury's verdict is contrary to the weight of the evidence. The decision to grant or deny a motion for a new trial is entrusted to the sound discretion of the trial court. An appellate court will overturn a decision only if it finds an abuse of discretion. (footnote omitted).

The Court of Appeals followed this statement by setting forth the long-standing standard which presents a trial judge with one of the most difficult standards to consider and apply, while maintaining intellectual honesty and integrity.

When a trial court rules on a motion for a new trial, it sits as a metaphorical "thirteenth juror," independently weighing the evidence and evaluating for itself the credibility of the witnesses. However, mere disagreement with the jury's verdict is not enough to invalidate a jury's verdict. A trial court's discretion to grant a new trial should be exercised "when necessary to prevent injustice," but it is otherwise intended to be used "sparingly and with caution." A jury verdict is not to be overturned lightly. (footnote omitted).

In other words, (in this court's humble and respectful understanding) the court is directed to sit as a metaphorical thirteenth juror, but is to always be mindful that it is not really a thirteenth juror. The Court of Appeals quoted portions from footnote 28 of its opinion crystalizes the conundrum faced by this court in the instant case:

This authority should be exercised sparingly and with caution; nevertheless, the trial court has wide discretion in deciding whether to grant a new trial in the interest of justice.

* * *

[A] decent respect for the collective wisdom of the jury, and for the function entrusted to it in our system, certainly suggests that in most cases the judge should accept the findings of the jury, regardless of the judge's own doubts on the matter. (citations omitted).

The Court of Appeals opinion continues to discuss the task presented to the trial court when it explains that

Although the authority of a trial court to grant a new trial on the ground that the verdict was contrary to the weight of the evidence is clear, "[t]he standard that is to control in passing on motions is not." Part of the difficulty is the "recurrent tendency" of courts to confuse the standard for deciding a motion for a new trial based on the weight of the evidence with the standard for deciding a motion for a judgment of acquittal. (footnote omitted).

The Court of Appeals then went on to reiterate that

When a trial court rules on a motion for judgment of acquittal, the court is required to view the evidence – and all reasonable inferences derived from that evidence – in the light most favorable to upholding the jury's verdict. In contrast, when a trial court rules on a motion for a new trial based on the weight of the evidence, the court must independently weigh the evidence and make its own credibility determinations. Because of this, a court may set aside a verdict as unjust even when the evidence is otherwise legally sufficient to support the verdict. (footnote omitted).

In light of this discussion by the Court of Appeals, this court believes that it is important to address points raised by the state in the most recent oral argument on defendant's Motion for a New Trial. In that argument, the state very respectfully noted that in its order dated August 21, 2015, this court referenced and discussed evidence that could have reasonably supported the conclusion reached by the finder of fact – i.e., the jury.

But in its 8/21/2015 order, this court did not enter its own personal factual findings and conclusions, any more than the Court of Appeals entered its own factual findings and conclusion at pages 19 through 22 of its opinion under the heading "Was the evidence presented at trial legally sufficient to convict Phornsavanh?"

But in explaining the correct legal standard for assessing a motion for a new trial based on the weight of the evidence, the Court of Appeals stated that

When a trial court rules on a motion for a new trial based on the weight of the evidence, the trial court must take a "personal view of the evidence," and "exercise its discretion and independently weigh the evidence," without reference to what "reasonable jurors" could find. The trial court must then "use its discretion to determine whether a verdict is against the weight of the evidence – not merely whether the trial court disagrees with the verdict – and whether a new trial is necessary 'in the interest of justice,' that is, 'to prevent injustice.' (footnote omitted).

The Court of Appeals again emphasized that "granting a motion for a new trial results only in a new trial; jeopardy does not attach." (footnote omitted). As the Court of Appeals explained,

"It is indisputable that a primary goal, perhaps the paramount goal, of the criminal justice system is to protect the innocent accused against erroneous convictions. Thus, "[i]f the complete record, testimonial and physical, leaves a strong doubt as to the defendant's guilt, even though not so strong a doubt as to require a judgment of acquittal, the district judge may be obliged to grant a new trial. (footnote omitted).

Finally, the Court of Appeals quoted Supreme Court direction that

[A] trial court may set aside a verdict and order a new trial in the interest of justice if the verdict is against the weight of the evidence. In deciding a motion for a new trial on this basis, the court must use its discretion and independently weigh the evidence. A court may set aside a verdict as being against the weight of the evidence even when there is substantial evidence to support it. (footnote omitted).

In its consideration of defendant's initial Motion for a New Trial, and in its consideration now of the motion for a new trial upon remand from the Court of Appeals, this court has clearly been concerned about honoring and respecting the jury's deliberative process and verdict. In general terms, the Court of Appeals very thoroughly explained the historical reasons for a trial judge to have such concerns.

But more specifically, this court recognizes and respects the time and effort expended by the jury in the instant case. This jury was very carefully vetted and selected by the excellent practitioners representing both the state and the defendant. As noted by

this court, and by the Court of Appeals, this jury spent a month in trial, followed by two-and-a-half days of deliberation before reaching its verdict. As the Court of Appeals pointed out in its opinion,

The jury deliberated for two-and-a-half days, during which time the jury requested and received additional specialized equipment to magnify the cell phone video and the still frames captured from the video. (footnote omitted).

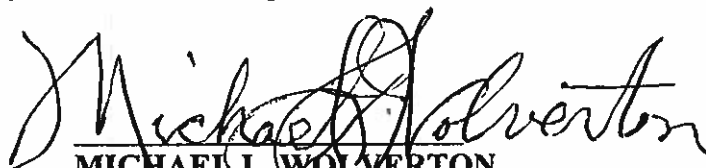
But under the new standard articulated by the Court of Appeals, this court must now

Use its discretion and independently weigh the evidence. A court may set aside a verdict as being against the weight of the evidence even when there is substantial evidence to support it. (footnote omitted).

Applying this new standard, this court finds that, although there was substantial evidence to support the jury's verdict, this court has previously noted that, had this been a bench trial, it "might well have not found that the state had proven its case beyond a reasonable doubt." Now, adopting that statement as part of its "personal consideration of the evidence" adduced at trial, this court turns to the task of considering the weight of the evidence in light of the motion for a new trial.

Again, given the direction for review by the Court of Appeals, and based upon a review of the testimony and evidence adduced at trial, and upon a review of the entire record herein, this court is persuaded by the written and oral argument presented by the defense in support of its "Motion for a New Trial," and therefore, the motion is hereby **GRANTED**.

ENTERED this 17th day of May, 2021, at Anchorage, Alaska.


MICHAEL L. WOLVERTON
Senior Superior Court Judge

I certify that on 5/18/21 a copy
of the above was mailed / faxed / handed to
each of the following:
☒ DAGuerstein ☒ PD Lavery
☐ OPA ☐ DOC
CA
Judicial Assistant / In-Court Clerk 